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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
AT SAN FRANCISCO**

CAMELLIA WALKER, individually and on  
behalf of a class of similarly situated individuals,

Plaintiff,

vs.

MOTRICITY, INC., a Delaware corporation,

Defendant.

Case No. 09-CV-01316 MHP

**MOTRICITY, INC.'S ANSWER TO  
CLASS ACTION COMPLAINT**

The Defendant, Motricity, Inc. ("Defendant" or "Motricity"), for its answer to the  
Class Action Complaint ("Complaint") filed against it, states:

**PARTIES**

1. Defendant lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint, and therefore, the allegations are denied.

2. Defendant admits that it is an “aggregator” but denies the remaining allegations of the first sentence of Paragraph 2 of the Complaint. Defendant admits the allegations contained in the last sentence of Paragraph 2 of the Complaint.

**JURISDICTION**

3. Defendant admits that jurisdiction is proper in this Court.

4. Defendant denies the allegations contained in Paragraph 4 of the Complaint.

**VENUE**

5. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 5 of the Complaint.

**CONDUCT COMPLAINED OF**

6. The allegations contained in Paragraph 6 of the Complaint do not require a response.

7. Defendant admits that it is an “aggregator.” Defendant denies the remaining allegations contained in Paragraph 7 of the Complaint.

8. Defendant denies the allegations contained in Paragraph 8 of the Complaint.

9. Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. Defendant denies the allegations contained in Paragraph 10 of the

1 Complaint.

2 11. Defendant denies the allegations contained in Paragraph 11 of the

3 Complaint.

4 12. Defendant denies the allegations contained in Paragraph 12 of the

5 Complaint.

6 13. Defendant denies the allegations contained in Paragraph 13 of the

7 Complaint.

8 14. Defendant denies the allegations contained in Paragraph 14 of the

9 Complaint.

10 15. Defendant denies the allegations contained in Paragraph 15 of the

11 Complaint.

12 16. Defendant admits that it facilitates delivery of mobile content. Defendant  
13 denies the remaining allegations contained in Paragraph 16 of the Complaint.

14 17. Defendant denies the allegations contained in Paragraph 17 of the

15 Complaint.

16 18. Defendant denies the allegations contained in Paragraph 18 of the

17 Complaint.

18 19. Defendant denies the allegations contained in Paragraph 19 of the

19 Complaint.

20 20. Defendant denies the allegations contained in Paragraph 20 of the

21 Complaint.

22 21. Defendant denies the allegations contained in Paragraph 21 of the

23 Complaint.

22. Defendant lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint, and therefore, the allegations are denied.

23. Defendant denies the allegations contained in Paragraph 23 of the Complaint.

24. Defendant denies the allegations contained in Paragraph 24 of the Complaint.

25. Defendant denies the allegations contained in Paragraph 25 of the Complaint.

26. Defendant denies the allegations contained in Paragraph 26 of the Complaint.

**THE FACTS RELATING TO NAMED PLAINTIFF WALKER**

27. Defendant lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 27 of the Complaint, and therefore, the allegations are denied.

28. Defendant lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 28 of the Complaint, and therefore, the allegations are denied.

29. Defendant denies the allegations contained in Paragraph 29 of the Complaint.

30. Defendant denies the allegations contained in Paragraph 30 of the Complaint.

31. Defendant denies the allegations contained in Paragraph 31 of the Complaint.

32. Defendant denies the allegations contained in Paragraph 32 of the Complaint.



1 Complaint.

2 44. Defendant denies the allegations contained in Paragraph 44 of the  
3 Complaint.

4 45. Defendant denies the allegations contained in Paragraph 45 of the  
5 Complaint.

6 46. Defendant denies the allegations contained in Paragraph 46 of the  
7 Complaint.

8  
9 **SECOND CAUSE OF ACTION**  
10 **(Tortious Interference with a Contract on behalf of the Class)**

11 47. Paragraph 47 of the Complaint does not require a response. To the extent  
12 that it does require a response, it is denied.

13 48. Defendant denies the allegations contained in Paragraph 48 of the  
14 Complaint.

15 49. Defendant denies the allegations contained in Paragraph 49 of the  
16 Complaint.

17 50. Defendant denies the allegations contained in Paragraph 50 of the  
18 Complaint.

19 51. Defendant denies the allegations contained in Paragraph 51 of the  
20 Complaint.

21  
22 **THIRD CAUSE OF ACTION**  
23 **(Violation of the California Consumer Legal Remedies Act ("CLRA"),**  
24 **Cal. Civ. Code § 1770 on behalf of the Class)**

25 52. Paragraph 52 of the Complaint does not require a response. To the extent  
26 that it does require a response, it is denied.

27 53. Defendant denies the allegations contained in Paragraph 53 of the

1 Complaint.

2 54. Defendant denies the allegations contained in Paragraph 54 of the  
3 Complaint.

4 55. Defendant denies the allegations contained in Paragraph 55 of the  
5 Complaint.

6 56. Defendant denies the allegations contained in Paragraph 56 of the  
7 Complaint.

8  
9 **FOURTH CAUSE OF ACTION**  
10 **(Violation of California's Unfair Competition Law ("UCL"),**  
11 **Cal. Bus. & Prof. Code § 17200 on behalf of the Class)**

12 57. Paragraph 57 of the Complaint does not require a response. To the extent  
13 that it does require a response, it is denied.

14 58. Defendant denies the allegations contained in Paragraph 58 of the  
15 Complaint.

16 59. Defendant denies the allegations contained in Paragraph 59 of the  
17 Complaint.

18 60. Defendant denies the allegations contained in Paragraph 60 of the  
19 Complaint.

20 61. Defendant denies the allegations contained in Paragraph 61 of the  
21 Complaint.

22  
23 **FIFTH CAUSE OF ACTION**  
24 **(Violation of California's Computer Crime Law,**  
25 **Cal. Pen. Code § 502 on behalf of the Class)**

26 62. Paragraph 62 of the Complaint does not require a response. To the extent  
27 that it does require a response, it is denied.

1                   63. Defendant denies the allegations contained in Paragraph 63 of the  
2 Complaint.

3                   64. Defendant denies the allegations contained in Paragraph 64 of the  
4 Complaint.

5                   65. Defendant denies the allegations contained in Paragraph 65 of the  
6 Complaint.

7                   66. Defendant denies the allegations contained in Paragraph 66 of the  
8 Complaint.

9                   67. Defendant denies the allegations contained in Paragraph 67 of the  
10 Complaint.

11  
12                                   **SIXTH CAUSE OF ACTION**  
13                                   **(An Accounting on behalf of the Class)**

14                   68. Paragraph 68 of the Complaint does not require a response. To the extent  
15 that it does require a response, it is denied.

16                   69. Defendant denies the allegations contained in Paragraph 69 of the  
17 Complaint.

18                   70. Defendant denies the allegations contained in Paragraph 70 of the  
19 Complaint.

20                   71. Defendant denies the allegations contained in Paragraph 71 of the  
21 Complaint.

22                                   **SEVENTH CAUSE OF ACTION**  
23                                   **(Trespass to Chattels on behalf of the Class)**

24                   72. Paragraph 72 of the Complaint does not require a response. To the extent  
25  
26  
27



1 that it does require a response, it is denied.

2 73. Defendant denies the allegations contained in Paragraph 73 of the  
3 Complaint.

4 74. Defendant denies the allegations contained in Paragraph 74 of the  
5 Complaint.

6 75. Defendant denies the allegations contained in Paragraph 75 of the  
7 Complaint.

8 76. Defendant denies all allegations not expressly admitted or denied herein.

9 77. Defendant denies that the Plaintiff or the putative class are entitled to any  
10 of the relief specified in the Plaintiff's Prayer for Relief.  
11

12  
13 **AFFIRMATIVE DEFENSES**

14 **FIRST DEFENSE**

15 The Plaintiff's Complaint fails to state a claim upon which relief can be granted and  
16 therefore should be dismissed.  
17

18 **SECOND DEFENSE**

19 The Plaintiff's claims, including the claims made on behalf of the putative class, are  
20 barred by the doctrines of laches, waiver and estoppel.

21 **THIRD DEFENSE**

22 The Plaintiff's claims, including the claims made on behalf of the putative class, are  
23 barred or limited by the time period(s) of the applicable statute of limitations and repose, if  
24 proven applicable by discovery.  
25  
26  
27

**FOURTH DEFENSE**

The Northern District of California is an inappropriate and inconvenient venue, and the Court should transfer this cause to the U.S. District Court for the Western District of Washington or other appropriate venue under the doctrine of *forum non conveniens*.

**FIFTH DEFENSE**

The Complaint is not appropriate for class relief because the lone Plaintiff does not fairly and adequately represent the interests of the other members of the putative class and, therefore, the Court should not certify any such class under Federal Rule of Civil Procedure 23.

**SIXTH DEFENSE**

The Complaint is not appropriate for class relief because the Plaintiff's claims are not typical of the claims of all the other members of the putative class. The Plaintiff cannot show that Motricity and/or wireless carriers made the same alleged promises to the other members of the putative class that were made to her when she activated her wireless account or that the other members of the putative class similarly relied on such promises. The Plaintiff also cannot show that the method for authorization of alleged charges that are the basis of this action were the same or substantially similar for all class members or that the other class members did not, in fact, authorize the alleged charges. Consequently, the Court should not certify any such class under Federal Rule of Civil Procedure 23.

**SEVENTH DEFENSE**

The Complaint is not appropriate for class relief because the claims asserted therein do not involve questions of fact or law common to the class. In particular, the Complaint seeks relief for alleged unauthorized charges to Plaintiff's account and the determinative question for each charge

1 on the putative class members' accounts is whether each individual customer authorized each  
2 individual charge. These are not appropriate class claims.

### 3 **EIGHTH DEFENSE**

4 The Plaintiff's claims under the California Computer Crime Law, Cal. Pen. Code § 502  
5 are barred because such claims are not covered under the provisions of that Act.  
6

### 7 **NINTH DEFENSE**

8 The Plaintiff's claim under the California Consumer Legal Remedies Act, Cal. Civil Code  
9 § 1770 is barred because the Plaintiff failed to comply with § 1782 of that Act.

### 10 **TENTH DEFENSE**

11 The Plaintiff's claim for exemplary damages cannot be sustained because an award of  
12 exemplary damages under California law subject to no predetermined limit, such as a maximum  
13 multiple of compensatory damages or a maximum amount on the amount of exemplary damages  
14 that could be imposed would violate Motricity's due process rights guaranteed by the Fourteenth  
15 Amendment to the United States Constitution and under the due process of law provisions of the  
16 California Constitution.  
17

### 18 **ELEVENTH DEFENSE**

19 The Plaintiff's claim for exemplary damages under the California Computer Crimes Law,  
20 Cal. Pen. Code § 502, is barred because Motricity did not engage in any improper activity, much  
21 less the fraud that is required to establish a claim for such damages.  
22

### 23 **TWELFTH DEFENSE**

24 The Plaintiff's request for class certification should be denied because class relief under  
25 Rule 23 of the Federal Rules of Civil Procedure is not the best method for adjudicating the claims  
26 of the alleged class members.  
27

**THIRTEENTH DEFENSE**

The Plaintiff's claims should be dismissed because she does not have a contract or any other agreement with Motricity.

**FOURTEENTH DEFENSE**

The Plaintiff's claims should be dismissed because she authorized all alleged charges incurred with or paid to Motricity, if any.

**FIFTEENTH DEFENSE**

The Plaintiff's request for injunctive relief should be denied because she cannot demonstrate a substantial likelihood of success on the merits or any immediate or irreparable injury.

**SIXTEENTH DEFENSE**

The Plaintiff and/or her agents failed and neglected to use reasonable care to mitigate, minimize, or avoid the alleged damages, and Motricity is therefore entitled to any sum to which the Plaintiff would otherwise be entitled, reduced by such sums as could have been mitigated, minimized, or avoided.

**SEVENTEENTH DEFENSE**

The Plaintiff and/or her agents failed and neglected to use reasonable care to mitigate, minimize, or avoid the alleged damages, and Motricity is therefore entitled to any sum to which the Plaintiff would otherwise be entitled, reduced by such sums as could have been mitigated, minimized, or avoided.

**EIGHTEENTH DEFENSE**

Motricity reserves the right to add further and additional affirmative defenses as its discovery and investigation in this action proceed.

WHEREFORE, Defendant Motricity, Inc. respectfully requests that the Court:

- A. Dismiss the Complaint with Prejudice;
- B. Grant a jury trial on all issues so triable;
- C. Award Motricity, Inc. its attorneys' fees and costs incurred in defending this action; and
- D. Grant Motricity any and all other relief to which it appears entitled.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

s/Russell B. Morgan

Russell B. Morgan

*Attorney for Defendant Motricity, Inc.*

**PROOF OF SERVICE**

The undersigned certifies that on June 3, 2009, he caused this document to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of filing to counsel of record for each party, as listed below:

Alan Himmelfarb  
Michael J. Aschenbrener  
Stephen A. Chiari  
David F. Gross  
Russell B. Morgan  
Scott K. Haynes

s/Russell B. Morgan  
Russell B. Morgan